IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2350 OF 2006

Bhaskar Shovakar ... Petitioner

Vs.

State of Maharashtra and Ors. ... Respondents

Ms. Anvee Dalal with Mr. Yusuf Iqbal i/by Yusuf Associates for Petitioner.

Mr. V.R. Dhond with Mr. M.P. Rege i/by M.P. Rege & Co. for R. No. 2.

Mr. G.W. Mattos, A.G.P. for R. No. 1.

CORAM: F.I. REBELLO &
ANOOP V. MOHTA,JJ.
DATED: OCTOBER 03, 2006

P.C.:

. The Petitioners approached this court against the order passed by the D.R.T. dated 9.3.2006 whereby the original Application filed by the Respondent SICOM Ltd. has been allowed. The statutory appeal which was available has not been availed of by the Petitioners herein.

. It is contended on behalf of the Petitioners that the issue as to whether the cause of action amounts to debt was for consideration before the learned Judge of this court in Summons for Judgment No. 1929 of 1999 in Summary suit No. 603 0f 1999 decided on 10.12.2001. It is pointed out that the learned Judge herein has held while granting

unconditional leave to defend that there is no debt and in these circumstances, it is contended that D.R.T. had no jurisdiction. The Petitioners have therefore, preferred the present Petition herein.

. We have heard the learned counsel for the parties. On the coming into force of the Recovery of Debts due to Financial Institutions and Banks Act, 1993 considering Section 31 of the Act, all pending suits would be covered by Section 17 of the Act, stands transferred by operation of Law to the D.R.T. The Act became applicable to this region since July, 1999. The suit was filed in the year 1998 and the order passed by this court is of the year 2001. Prima facie therefore, on the coming into force of the Act and by virtue of Section 31 of the Act, the proceedings ought to have been transferred to D.R.T. and to that extent in our opinion, it would not have been open to the learned Judge to have considered the summons for judgment in the suit which ought to have been transferred to D.R.T.

. Even otherwise, the prayer in the suit was for recovery of money. Therefore, whether the tribunal had jurisdiction or not was within the jurisdiction of the D.R.T. The Petitioners herein had raised the said plea in their evidence, though not in the

written statement. The D.R.T. has answered the same against the Petitioner. Considering the above, in our opinion, merely because while granting unconditional leave to defend, there are certain observations, as to whether the amount become due and payable would not mean that it is a finding on the issue. That was only a prima facie finding. The finding on the issue has been rendered by the D.R.T. and it had exclusive jurisdiction to decide the issue. Considering the above, in our opinion this will not be a fit case for this court to exercise its extra ordinary jurisdiction. It will be open to the Petitioner to prefer an appeal and proceed according to law. With the above observations, Petition disposed of.

(ANOOP V. MOHTA,J.) **(F.I.REBELLO, J.)**